

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

Rulings by summary order do not have precedential effect. Citation to summary orders filed after January 1, 2007, is permitted and is governed by this court's Local Rule 32.1 and Federal Rule of Appellate Procedure 32.1. In a brief or other paper in which a litigant cites a summary order, in each paragraph in which a citation appears, at least one citation must either be to the Federal Appendix or be accompanied by the notation: "(summary order)." A party citing a summary order must serve a copy of that summary order together with the paper in which the summary order is cited on any party not represented by counsel unless the summary order is available in an electronic database which is publicly accessible without payment of fee (such as the database available at <http://www.ca2.uscourts.gov/>). If no copy is served by reason of the availability of the order on such a database, the citation must include reference to that database and the docket number of the case in which the order was entered.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the ninth day of October two thousand and nine.

PRESENT:

JOSEPH M. McLAUGHLIN,
JOSÉ A. CABRANES,
Circuit Judges.
EDWARD R. KORMAN,
*District Judge.**

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EDWIN ORLANDO SALTO-MOLINA, FLANCLIN BLADIMIR
SALTO-MOLINA, JHONNY OMAR GUERRERO-SALTO,
WILSON GENARO PILLCO-SALTO,

*Petitioners,***

v.

Nos. 08-3379-ag (Lead)
08-3441-ag (Con)
08-3442-ag (Con)
08-3443-ag (Con)

ERIC H. HOLDER, JR., United States Attorney General

* The Honorable Edward R. Korman, of the United States District Court for the Eastern District of New York, sitting by designation.

** The Clerk of Court is directed to amend the official caption to conform to the listing of the parties stated above.

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FOR PETITIONER:

H. Raymond Fasano, Madeo & Fasano, New York, NY

FOR RESPONDENT:

Theodore C. Hirt, Attorney, Office of Immigration Litigation (Michael F. Hertz, Acting Assistant Attorney General, James E. Grimes, Senior Litigation Counsel, Office of Immigration Litigation, *on the brief*) Civil Division, U.S. Department of Justice, Washington, D.C.

UPON CONSIDERATION of the petition for review of a Board of Immigration Appeals decision, **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that the petition for review is **DENIED**.

Petitioners, Edwin Orlando Salto-Molina (“Edwin”), Flanclin Bladimir Salto-Molina (“Flanclin”), Jhonny Omar Guerrero-Salto (“Jhonny”) and Wilson Genaro Pillco-Salto (“Wilson”), natives and citizens of Ecuador, seek review of final orders of the Board of Immigration Appeals (“BIA”) entered, as to Wilson, on June 10, 2008, and, as to the other three petitioners, on June 19, 2008, affirming the decision of an Immigration Judge (“IJ”) denying petitioners’ motions to suppress evidence and ordering their removal. We assume the parties’ familiarity with the factual and procedural history of the case.

On appeal, petitioners argue that the proceedings before the IJ were fundamentally unfair and denied them due process of law because an evidentiary hearing was not conducted to further “develop the record.” Pet’rs Br. 15. Petitioners never requested an evidentiary hearing before the IJ, however, and never suggested the lack of such a hearing as a ground for error in their brief to the BIA. Accordingly, because petitioners failed to exhaust their administrative remedies with respect to that claim, we lack jurisdiction to consider it in the first instance. *See* 8 U.S.C. § 1252(d)(1); *Singh v. U.S. Dep’t of Homeland Sec.*, 526 F.3d 72, 77-78 (2d Cir. 2008) (dismissing claim where petitioner’s BIA brief was not adequate to put the agency on notice of a particular argument).

*** Pursuant to Federal Rule of Appellate Procedure 43(c)(2), Attorney General Eric H. Holder, Jr. is automatically substituted for former Attorney General Michael B. Mukasey as respondent in this case.

The IJ's failure to hold an evidentiary hearing is the only issue adequately raised in petitioners' opening brief and we therefore consider all other arguments waived. *See Zhang v. Gonzales*, 426 F.3d 540, 546 n.7 (2d Cir. 2005).

CONCLUSION

We have considered all of the petitioners' arguments and find them to be without merit. For the foregoing reasons the petition for review is **DENIED**. As we have completed our review, any stay of removal that the Court previously granted in this petition is **VACATED**, and any pending motion for a stay of removal in this petition is **DISMISSED**.

FOR THE COURT,
Catherine O'Hagan Wolfe, Clerk of Court

By _____